IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/04/2003

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

Criminal Appeal No.329 of 2000

S.Jagadeesan .. Appellant

-Vs-

The State, by Inspector of
Police, Palakodu Police Station,
Palakodu, Dharmapuri District.
(Crime No.3 of 1996). .. Respondent

Appeal against the judgment of the learned Principal Sessions Judge, Dharmapuri at Krishnagiri, made in S.C.No.163 of 1998 dated 25.10.19 99.

!For Appellant : Mr.V.Gopinath, S.C.
For M/s.L.Mahendran &
C.Christopher

^For Respondent : Mr.M.K.Subramanian
Govt. Advocate (Crl. Side)

:J U D G M E N T

(Judgment of the Court was delivered by N.DHINAKAR, J.)

The sole appellant, who, in this judgment, will be referred to as 'the accused, was tried before the learned Principal Sessions Judge, Krishnagiri, in Sessions Case No.163 of 1998. The allegation against him in the charge is that at 1.00 a.m. on 30/31.12.95, he slapped his wife, Muthumani and also beat her on the head and after she fell down unconscious, threw her into a canal, thinking that she is dead, as a result of which, she died on account of asphyxia due to drowning. The learned Sessions Judge, accepting the oral and documentary evidence, convicted and sentenced him to imprisonment for life, which are in challenge in this appeal.

2. The facts necessary to dispose of the appeal can be briefly summarised as follows:-

The deceased is the wife of the accused. P.W.2 is their daughter and P.W.1 is the younger brother of P.W.2. During the relevant period, they were residing at Pallimuthur. The accused developed intimacy with his sister-in-law and the deceased was, therefore, questioning him as regards the said conduct. There used to be quarrels between the husband and wife on account of that. On 30.12.95 at about 8.00 a. m., the accused left the village, after informing his family members that he intends purchasing manure. But he did not return home until evening. The deceased, accompanied by her son, P.W.1, went to the field to irrigate the lands and at 1.00 a.m., the accused returned. The deceased questioned the accused as to why he had taken so much time for purchasing manure and found fault with him. She also accused him of having relationship with her sister, leading to a quarrel between the husband and wife. The accused slapped her and also beat her on the head. The deceased fell down and became unconscious. P.W.1, who was present, held the hands of his father and requested him not to beat her. The accused took P.W.1 to the house and after leaving him in the custody of his daughter, P.W.2, returned to the field and finding his wife remaining unconscious and thinking that she is dead, threw her into a canal. Later, he returned home and on being questioned by his two children, informed them that their mother has left for her parental home. He, thereafter, went to his father-in-law's house, where he met P.W.4 on 1.1.96. The accused was questioned by P.W.4 as he was in a pensive mood and the accused, thereafter, opened his heart and poured out the truth. P.W.4 took the accused and produced him before P.W.3, the Village Administrative Officer, at 9.45 a.m. and to the Village Administrative Officer, P.W.3, the accused narrated the whole incident. The said narration was reduced into writing. The said statement of the accused given to P.W.3 is Ex.P.1. P.W.3, thereafter, prepared his report, Ex.P.2 and sent Exs.P.1, P.2 and the accused to Palacode police station, where they were produced before P.W.9, the Sub-Inspector at noon. P.W.9, the Sub-Inspector, on receipt of Ex.P.1, registered a case in Crime No.3 of 1996 under Section 302 I.P.C. The accused was locked-up. He prepared express reports and Ex.P.7 is a copy of the printed first information report. He informed the Inspector of Marandalli.

3. P.W.10, on being informed about the registration of the crime over V.H.F., reached Palacode police station at 12.40 p.m., where he obtained a copy of the printed first information report. The accused was in the police lock-up and he was questioned. The officer then proceeded to the scene of occurrence and in the presence of P.W.5 and another, prepared an observation mahazar, Ex.P.3. The body was taken out of the canal and a rough sketch, Ex.P.8, was prepared. The photographer, P.W.6, took photographs of the scene of occurrence and the dead body. The inquest was conducted between 3.00 a.m. and 6.15 a.m. in the presence of panchayatdars, during which, P.Ws.1, 2 and others were questioned and their statements were recorded. Ex.P.9 is the inquest report. After the inquest, a requisition, Ex.P.4, was issued to the doctor for conducting autopsy and the body was handed over to a police constable, P.W.8.

4. On receipt of Ex.P.4, the requisition, P.W.7, the then Civil Assistant Surgeon attached to Government Hospital, Palacode, conducted autopsy on the body of the deceased Muthumani and found the following external

injuries:-
1. An abrasion over the back of right forearm in the middle 5 cm. x 5 cm.
2. An abrasion over the front of lower jaw and neck 15 cm. x 10 cm.
3. An abrasion over the right cheek 5 cm. x 5 cm.
4. Multiple abrasion over the inner aspect of right and left thighs each 10 and 5 cm.
5. An abrasion over the left temporal region behind the left ear 5 cm. x 3 cm.
6. Bleeding from left ear. All the above said injuries are antemortem innature.
7. Fish bitten marks over the left eye lids and left side mouth eaten by fish.
The skin of hands and feet are wrinkled.

The doctor issued Ex.P.5, the post-mortem certificate, with the opinion that the deceased died on account of asphyxia due to drowning and death would have occurred about 50 to 60 hours prior to autopsy.

5. P.W.10, continuing with his investigation, questioned witnesses and recorded their statements. He sent the accused to Court for remand. He continued with his investigation, as the Inspector of Palacode was on leave. The investigation in the case was, later, taken up by P.W.11 on 3.12.96, who questioned four witnesses and also the doctor, who conducted autopsy and later, after his transfer, further investigation was taken up by P.W.12, who laid the final report against the accused under Section 302 I.P.C.

6. The accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him. He denied all the incriminating circumstances. He filed a written statement, in which, he has stated that he had no illicit relationship with his sister-inlaw and on 30.12.95, he took his bed along with his children only to find out his wife missing in the morning of 31.12.95. He has further alleged that he went in search of his wife at his father-in-law's house, where he was informed that his wife did not come there and on 1.1 .96, he went to Palacode police station, where he gave a complaint about the missing of his wife and that the police officers detained him at the police station till 11.00 a.m. and later they sent for P.Ws.3 , 4 and others. According to him, after the arrival of P.Ws.3 and 4 and after a discussion, a statement was prepared, in which he was forced to sign and that he did not give Ex.P.1 at the office of the Village Administrative Officer, as claimed by the prosecution.

7. The prosecution examined P.W.7, the doctor, to establish the cause of death. According to the doctor, he found the injuries, which he noted in the post-mortem certificate, which we have already extracted in the earlier part of the judgment. According to him, the deceased died on account of asphyxia due to drowning. The said fact is also not disputed by the accused.

8. The question that is to be decided by us is whether the accused intended to cause the death of the deceased and whether with that intention, threw his wife into the canal, after beating her on the head and on

the cheek, as sought to be proved by the prosecution through the eye witness, P.W.1. P.W.1 is the son of the deceased. He turned hostile. The daughter, P.W.2 also turned hostile. The only evidence, on which the prosecution perforce had to rely, is the statement given by the accused to P.W.3, the Village Administrative Officer. It is the evidence of P.W.3 that while he was in his office on 1.11.96 at 9.45 a.m., the accused accompanied by his brother-in-law, P.W.4, met him and thereafter, the accused narrated the incident informing him that he has beaten his wife and thinking that she is dead, threw her into the canal. On going through the evidence of P.W.3, we find no infirmity in the evidence. In fact, P.W.4, the brother-in-law of the accused, has supported P.W.3 and according to him, on 1.1.96, the accused came to his house and was seen in a pensive mood. He questioned him and the accused, thereafter, informed him that he has beaten his wife and threw her into the canal and according to him, he took the accused to P.W.3. P.W.3 being an independent witness and having no grudge or ill-will against the accused, had no reason to come out with a false version. The statement of the accused that the deceased took her bed on 30.12.95 and was not seen in the morning on 31.12.95 could only be an after thought, in view of the statement made by him to P.W.3, the Village Administrative Officer. We do not attach much importance to the defence theory that the deceased left the house on her own accord. On going through the evidence of P.W.3 and Ex.P.1, the statement given by the accused to P.W.3, we find no infirmity and it contains the details, which could have been only in the exclusive knowledge of the accused. We, therefore, accept Ex.P.1 as a statement given by the accused to P.W.3 and find that the accused beat the deceased and thereafter, threw her into the canal, thinking that she is dead.

9. The final question that is to be decided by us is the nature of offence committed by the accused. Admittedly, the case of the prosecution itself is that the accused beat the deceased on the head and she fell down. A perusal of the statement, Ex.P.1, indicates that the accused, after beating the deceased, took P.W.1 from the place and after leaving him at the house, returned to the scene of occurrence and found his wife lying on the ground. According to him, he felt that his wife has died and therefore, in order to escape the consequences of murder, he threw the dead body into a canal. This shows that when he threw his wife into the canal, he was of the impression that his wife is dead on account of the beating given by him and did not know that she was alive. Therefore, the accused did not throw his wife into the canal to cause her death by drowning, but threw her under the mistaken impression that she is dead and he is throwing the dead body into the canal.

10. In CHINNATHAMBI Vs. STATE [1952 M.W.N.(Cr.) 227], a Division Bench of this Court had to decide the nature of the offence committed by the appellant in that case and the facts in the case before the Division Bench are that the deceased was beaten by the accused with a stick and later, thinking that the person, who was beaten, is dead, the body was hanged by a rope and as a result of the said hanging, the said person died. The Division Bench, on the above circumstances, came to the conclusion that the hanging had taken place in order to create a false evidence under the impression and

belief that the woman, the deceased in that case, had already died as a result of the blow which the appellant dealt on her, while in fact death has really been caused by the hanging itself and therefore, it cannot be said that the appellant intended to cause the death by hanging. The Division Bench further observed that he was only hanging the body, which was dead already, according to his belief, in order to make it appear that the woman got herself hanged by the rope and died as a result thereof and in such case, the offence committed by the accused will only fall under Section 325 I.P.C., as he has caused a grievous injury.

11. It could also be seen that the act itself does not make a person guilty, unless his intentions are shown to be guilty, from the maxim 'Actus non facit reum, nisi mens sit rea'. When we apply the above maxim, we are of the view that the facts of the present case and the facts in the judgment cited supra considered by the Division Bench are similar in nature and that the said judgment will apply with all force to the facts of the present case. In the present case also, the accused had beaten the deceased. She fell down unconscious and thereafter, the accused, after returning from his house, where he left his son P.W.1, thinking that his wife is dead, threw her into the canal and his wife, who was alive, died on account of asphyxia due to drowning. At the time when the accused threw the body into the canal, he did not know that his wife is only unconscious and is not dead and therefore, when he was throwing the body of his wife into the canal, he was under the mistaken impression that the death has already occurred and therefore, the subsequent act of throwing the body into the canal is not committed with an intention to cause her death by drowning. In the above circumstances, we are of the view that the conviction and sentence of the accused under Section 302 I.P.C. are to be set aside and instead, he is to be convicted under Section 325 I.P.C., since the doctor, who conducted autopsy, found a fracture on the base of the skull.

11. Accordingly, the conviction and sentence imposed on the appellant under Section 302 I.P.C. are set aside and instead, he is convicted under Section 325 I.P.C., for which he is sentenced to undergo rigorous imprisonment for a period of three years. The appeal is dismissed with the above modification in conviction and sentence. The learned counsel for the appellant submits that the appellant has already undergone the sentence of three years and if so, he shall be released forthwith, unless he is required in connection with any other case.

(N.D.,J.) (S.A.,J.)
09.04.2003
Index: Yes
Website: Yes

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To

1.The Principal Sessions Judge, Dharmapuri at Krishnagiri.

2.The District Collector, Dharmapuri District.

3.The Director General of Police, Chennai.

4.The Superintendent, Central Prison, Salem.

5.The Inspector of Police, Palakodu Police Station, Palakodu, Dharmapuri District.

6.The Public Prosecutor, High Court, Madras.